S.B.Civil Second Appeal No.33/2002

LRs of Tola Ram vs. Saddiq Mohd. and others.

Date : 26.7.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. JK Bhaiya, for the appellant.

Mr. RR Nagori, for the respondents.

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Heard learned counsel for the parties and perused the record.

The appellants landlords are aggrieved against the judgment and decree of the first appellate court dated 18.9.2001 by which the judgment and decree of the trial court dated 7.3.1995 for eviction of tenant from the rented premises was reversed. The trial court granted the decree for eviction of tenant on the ground of material alteration in the suit premises by the defendant tenant. The appellate court found that the alteration in the suit premises is not material.

Facts of the case are that the plaintiff Tola Ram in his life time filed a suit against the defendant/tenant/respondent on the ground of default, subletting and material alteration in the disputed premises. The trial court decided the issue of subletting against the plaintiff and gave benefit of first default to the tenant but decreed the suit of the plaintiff against

the tenants on the ground of material alteration in the rented premises by the tenant. The allegation of material alteration in th suit premises are that the defendant raised an 'Inth' Wall in the shop and converted one shop into two shops. The appellate court reversed the finding of the trial court on the issue of material alteration and consequently, dismissed the suit of the landlord/plaintiff.

According to learned counsel for the appellant, the defendant himself admitted in his statement that by the construction, the value of the property has been diminished or lower down. It is also submitted that there was no reason for the appellate court to reversed the finding of fact recorded by the trial court on issue of material alteration on the basis of evidence available on the record.

I have considered the submissions of learned counsel for the appellant and perused the record also.

It is clear from the reasons given by the appellate court in detail for reversing the finding of the trial court about allegations of material alteration in rented premises and thereafter reached to the conclusion that the alleged construction is not material alteration. It will be worthwhile to mention here that the plaintiff in his plaint itself alleged only that the defendant constructed the 'Inth' Wall and converted one shop into two shops. In the plaint, he never contended that the said wall was

constructed after digging foundation or by any alteration in the premises, the value of the property affected.

In view of the above, if the first appellate court has recorded the finding that the alleged raising of 'Inth' wall which can be removed without much efforts, the tenant has not made any material alteration in the suit premises. This Court while exercising jurisdiction under Section 100 CPC cannot appreciate and re-appreciate the evidence for the purpose of taking a different view on the question of fact.

The two courts below concurrently decided the question of subletting against the appellant. This finding of fact recorded by the courts below also has not vitiated because of any reason. That is also beyond the scope of Section 100 CPC. No substantial question of law is involved in this appeal.

In view of the above discussion, this second appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya